

## Rye City Planning Commission Minutes

September 23, 2003

### **PRESENT:**

Michael Klemens, Chairman  
Barbara Cummings, Vice-Chair  
Peter Larr  
Patrick McGunagle  
Martha Monserrate

### **ABSENT:**

Franklin Chu  
Hugh Greechan

### **ALSO PRESENT:**

Christian K. Miller, AICP, City Planner  
George Mottarella, P.E., City Engineer

## **I. HEARINGS**

### **1. Dugan Residence**

Chairman Klemens read the public notice.

Pam Lester (applicant's landscape architect) noted that the application involved the construction of a garage and reconfiguration of a driveway in the rear yard of a property located at 86 Mendota Avenue. Ms. Lester noted that most of the project would occur on existing impervious area including an existing driveway and shed. The net increase in impervious area would be only 50 square feet and that wetland plantings exceeding a 3:1 ratio would be provided along the rear property line. Ms. Lester noted that stormwater runoff would be addressed with sub-surface drywells.

There were no public comments.

On a motion made by Patrick McGunagle, seconded by Peter Larr and carried by the following vote:

AYES: Michael Klemens, Barbara Cummings, Peter Larr, Patrick McGunagle,  
Martha Monserrate

NAYS: None

RECUSED: None

ABSENT: Franklin Chu, Hugh Greechan

the Planning Commission took the following action:

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1 ACTION: The Planning Commission closed the public hearing on wetland permit  
2 application number WP132.  
3

### **2. Rheingold**

5  
6 Chairman Klemens read the public notice.  
7

8 Richard Horsman (applicant's landscape architect) explained that that project involved  
9 the installation of a dry-laid fieldstone wall along the top of an existing slope in the rear  
10 yard of a property located on Manursing Way. Mr. Horsman noted that the project was  
11 necessary to control erosion into the wetland located less than 100 feet from the  
12 property. Only handwork would be used to construct the wall.  
13

14 There were no public comments.  
15

16 On a motion made by Martha Monserrate, seconded by Patrick McGunagle and carried  
17 by the following vote:  
18

19 AYES: Michael Klemens, Barbara Cummings, Peter Larr, Patrick McGunagle,  
20 Martha Monserrate

21 NAYS: None

22 RECUSED: None

23 ABSENT: Franklin Chu, Hugh Greechan  
24

25 the Planning Commission took the following action:  
26

27 ACTION: The Planning Commission closed the public hearing on wetland permit  
28 application number WP134.  
29

### **3. Rattner**

31  
32 Chairman Klemens read the public notice.  
33

34 Jonathan Kraut (applicant's attorney) requested that the Commission postpone the  
35 hearing until its next meeting. Mr. Kraut explained that he was only recently retained by  
36 the applicant and that he required additional time to review the matter and present  
37 additional information for the Commission's consideration. Mr. Kraut added that  
38 consultants involved with the application would not be present until the Commission's  
39 October 14 meeting.  
40

41 The Commission responded that it would not postpone the hearing since it had already  
42 been noticed and that it wanted to give any public that may have attended the meeting  
43 the opportunity to comment.  
44

45 There were no public comments.

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On a motion made by Michael Klemens, seconded by Peter Larr and carried by the following vote:

AYES: Michael Klemens, Barbara Cummings, Peter Larr, Patrick McGunagle,  
Martha Monserrate  
NAYS: None  
RECUSED: None  
ABSENT: Franklin Chu, Hugh Greechan

the Planning Commission took the following action:

ACTION: The Planning Commission continued the public hearing on wetland permit application number WP133.

### **4. Fortin**

Chairman Klemens read the public notice.

Paul Jaehnig (applicant's landscape architect) provided an overview of the application noting that it involved the construction of an addition to an existing residence located at 11 Glendale Avenue. This subject property is a pie-shaped lot having a lot area of approximately 0.68 acres. Mr. Jaehnig noted that the proposed project would disturb approximately 610 square feet of the site and that approximately 1,220 square feet of mitigation area is proposed. Mr. Jaehnig stated that the mitigation area would consist of wetland plants located along the edge of a small wetland located along the eastern property line. Mr. Jaehnig stated that the application also proposes to provide a 40-foot buffer area from the wetland area located at the rear of the property. Mr. Jaehnig noted that no fertilizer or pesticide use would be permitted within this 40-foot buffer area.

There were no public comments.

On a motion made by Martha Monserrate, seconded by Patrick McGunagle and carried by the following vote:

AYES: Michael Klemens, Barbara Cummings, Peter Larr, Patrick McGunagle,  
Martha Monserrate  
NAYS: None  
RECUSED: None  
ABSENT: Franklin Chu, Hugh Greechan

the Planning Commission took the following action:

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ACTION: The Planning Commission closed the public hearing on wetland permit application number WP136.

### **ITEMS PENDING ACTION**

#### **1. Dugan**

The Planning Commission reviewed the comments of the CC/AC memorandum dated August 24, 2003. The Commission agreed to provide the CC/AC comments to the applicant. The Commission noted that the CC/AC requested that correct impervious surface calculations be provided. The Commission and Pam Lester (applicant's landscape architect) noted that the site plan shows that there would be a net increase of impervious area of approximately 50 square feet. The Commission also noted that mitigation in form of wetland plantings would be provided at a ratio of 3:1 to the amount of impervious area added to the site. Ms. Lester added that the proposed mitigation would be located along the rear yard adjacent to Blind Brook.

The Commission discussed the CC/AC recommendation that the applicant provide stabilization to the bank of Blind Brook. The Commission disagreed with this recommendation since Blind Brook is not located on the applicant's property.

The Commission discussed the CC/AC recommendation that stormwater measures be provided and that the garage be relocated or its size decreased. The Commission noted that stormwater control measures are being provided by the applicant and shown on the site plan. The Commission also noted that an alternative location for the garage did not appear practical due to zoning restrictions and the need to provide adequate and safe vehicle turn around on the property. The Commission added that relocating the garage would not significantly benefit the adjacent Blind Brook.

On a motion made by Peter Larr, seconded by Patrick McGunagle and carried by the following vote:

AYES: Michael Klemens, Barbara Cummings, Peter Larr, Patrick McGunagle, Martha Monserrate

NAYS: None

RECUSED: None

ABSENT: Franklin Chu, Hugh Greechan

the Planning Commission took the following action:

ACTION: The Planning Commission adopted a resolution conditionally approving wetland permit application number WP132.

#### **2. Rheingold**

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The Planning Commission discussed the details of the construction of the wall with Richard Horsman (applicant's landscape architect). The Commission considered the application appropriate and reasonable.

On a motion made by Peter Larr, seconded by Barbara Cummings and carried by the following vote:

AYES: Michael Klemens, Barbara Cummings, Peter Larr, Patrick McGunagle, Martha Monserrate

NAYS: None

RECUSED: None

ABSENT: Franklin Chu, Hugh Greechan

the Planning Commission took the following action:

ACTION: The Planning Commission adopted a resolution conditionally approving wetland permit application number WP134.

### 3. Rattner

There was no discussion of this matter. The Commission agreed to discuss the application after the continued public hearing on October 14.

### 4. Fortin

The Commission questioned the proposed grading on the property. Mr. Jaehnig responded that grading only involved the placement of topsoil to cover exposed roots of trees on the property. Mr. Jaehnig added that this plan revision was made in response to the site inspection conducted with the Planning Commission.

The Commission discussed the provision for restricting herbicide and pesticide use within the proposed 40-foot wetland buffer area. The Commission discussed the consistency of that restriction with the existing regulations in the City's Wetland and Watercourses Law. The Commission requested further changes to the note referring to this restricted area to improve its clarity. The Commission also discussed with the applicant the monumentation that is proposed to identify the edge of this 40-foot buffer area.

On a motion made by Martha Monserrate, seconded by Peter Larr and carried by the following vote:

AYES: Michael Klemens, Barbara Cummings, Peter Larr, Patrick McGunagle, Martha Monserrate

NAYS: None

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1 RECUSED: None

2 ABSENT: Franklin Chu, Hugh Greechan

3  
4 the Planning Commission took the following action:

5  
6 ACTION: The Planning Commission adopted a resolution conditionally approving  
7 wetland permit application number WP136.

### **5. Beechert**

10  
11 The Commission noted concern with the City issuing a fence permit and not identifying  
12 that a wetland permit was also required. Given this oversight by the City the  
13 Commission was pleased that the applicant was not required to pay the requisite  
14 wetland permit fee.

15  
16 The Planning Commission discussed the memorandum of the CC/AC dated September  
17 7, 2003. The Commission noted that the CC/AC found that the proposed project may  
18 not be consistent with the City's Wetlands Law because the proposed fence may  
19 impact natural aesthetic values and provide inadequate clearance under the fence for  
20 the flow of flood water and wildlife movement. The Commission discussed these  
21 concerns by noting that aesthetic issues are, to some degree, beyond the jurisdiction of  
22 a wetland permit review. To address flood flow and wildlife movement concerns the  
23 Commission noted on its site inspection that there was a gap below the existing fence.  
24 The Commission agreed that the fence should be set above grade but not to the extent  
25 that it would exceed the requirements of the City's Fence Law.

26  
27 On a motion made by Martha Monserrate, seconded by Peter Larr and carried by the  
28 following vote:

29  
30 AYES: Michael Klemens, Barbara Cummings, Peter Larr, Patrick McGunagle,  
31 Martha Monserrate

32 NAYS: None

33 RECUSED: None

34 ABSENT: Franklin Chu, Hugh Greechan

35  
36 the Planning Commission took the following action:

37  
38 ACTION: The Planning Commission set a public hearing on wetland permit  
39 application number WP139 for its next meeting on October 14, 2003.

### **6. Rose**

40  
41  
42  
43 Joe Murphy stated that he was a member to the City's Senior Advisory Committee and  
44 that he was intervening on behalf of the Rose family to assist them in the processing of  
45 the wetland permit/violation application. Mr. Murphy indicated that he was not

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1 representing the Rose's in terms of their legal rights but that he wanted to re-enforce to  
2 the Commission the need for compassion for the applicant. Mr. Murphy indicated that  
3 Mr. Rose is an elderly gentleman who has had a variety of health problems and that  
4 these concerns should be balanced against the alleged violation and the requirements  
5 of the City Wetlands Law. Mr. Murphy indicated that the Roses were interested in  
6 seeking resolution to this matter in as quickly as possible.

7  
8 The Planning Commission responded that it always tries to be compassionate and  
9 understanding of applicant needs but that it has an obligation to consider the  
10 application the context of the City Wetlands Law. The Commission questioned the  
11 appropriateness of Mr. Murphy representing an applicant given his position as  
12 Chairman of the City's Conservation Commission/Advisory Council. Mr. Murphy  
13 responded that he fully expects the Commission to make a decision consistent with the  
14 City's Wetlands Law. Mr. Murphy added that he will be recusing himself from any  
15 discussion of this matter that comes before the CC/AC.

16  
17 The Commission discussed the characteristics of the site based on their inspection of  
18 the property. The Commission noted the placement of wood chips in and/or near  
19 wetland areas. The Commission debated the appropriate remediation given the extent  
20 of damage on the property. The Commission noted that remediation (such as removing  
21 wood chips from wetland areas) could result in more impact than allowing the deposited  
22 material to remain in place. The Commission noted, however, that if it allows the wood  
23 chips to remain that that could set an undesirable precedent for others to conduct  
24 similar violations. The Commission stated that if it were to allow the wood chips to  
25 remain in place that some form of compensation to the City would be necessary, such  
26 as a conservation easement or other restriction on the wetland portion of the property.  
27 The Commission noted that the conservation easement might better fulfill long term  
28 environmental stewardship for the area than the short-term benefits of the removal of  
29 wood chips.

30  
31 The Planning Commission discussed with the applicant whether some of the wood  
32 chips in the more sensitive areas could be removed. The applicant's consulting  
33 engineer suggested that such removal in limited areas could be possible. The  
34 Commission agreed, however, that more information was necessary to determine what  
35 areas have the greatest extent of fill and the depth of that fill. The applicant's  
36 consulting engineer stated that he would provide additional information to the Planning  
37 Commission regarding the extent of fill and its estimated depth. The Commission  
38 agreed that it would wait for the applicant to submit this information before determining  
39 whether it was necessary to retain additional professional expertise to advise the  
40 Commission on the most appropriate remediation strategy. The Commission also  
41 added that representatives from the City could go and inspect the property to provide  
42 additional information regarding the extent of fill and its anticipated depth.

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1 The Commission agreed that the applicant should provide additional information and  
2 that City staff should communicate to the Rye City Court that the applicant is pursuing  
3 the violation with due diligence.  
4

### 6 **7. Walker**

7  
8 The Planning Commission reviewed the subdivision plat and the accompanying  
9 easement language provided by the applicant. The Commission heard the comments  
10 of neighboring property owner Ty Ralli who was also provided a copy of the applicant's  
11 most recent submission. Mr. Ralli indicated that he did not have sufficient time to  
12 review the submitted material but that he had some concerns regarding the proposed  
13 planting plan and enforcement of the proposed easement. Given the lack of time for  
14 the neighbors to respond to the applicant's most recent submission the Commission  
15 agreed to set a final public hearing on the final subdivision plat.  
16

17 The Commission reviewed the proposed easement and recommended that they be  
18 separated into two rather than one easement. In particular, the Commission requested  
19 that the driveway and utility easement be separated from the perimeter landscape  
20 buffer and wetland restricted area easements. The City Planner explained that it was  
21 not realistically reasonable to expect that all plant material shown on the approved  
22 landscape plan would be preserved in perpetuity. The City Planner added that the  
23 intent of the landscape buffer restricted area was to provide a vegetated screen from  
24 neighboring properties. He indicated that all plant material will be required to be  
25 installed as shown on the approved drawing prior to a residence getting a certificate of  
26 occupancy.  
27

28 Linda Whitehead (applicant's attorney) expressed concern with the Commission's  
29 desire to set a public hearing. Ms. Whitehead noted that the most recent submission  
30 was consistent with the condition of the Commission's preliminary approval and that  
31 there was no substantive modifications in the application that warranted an additional  
32 hearing.  
33

34 A resident of 3 Rockridge Road questioned the alignment of the driveway and why it  
35 was not shifted further from the perimeter property line. The Commission explained  
36 that the alignment of the driveway in the location near 3 Rockridge Road was necessary  
37 to preserve and existing stand of hemlock trees on the property.  
38

39  
40 On a motion made by, Barbara Cummings seconded by Martha Monserrate and carried  
41 by the following vote:  
42

43 AYES: Michael Klemens, Barbara Cummings, Peter Larr, Patrick McGunagle,  
44 Martha Monserrate

45 NAYS: None



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1 RECUSED: None

2 ABSENT: Franklin Chu, Hugh Greechan

3  
4 the Planning Commission took the following action:

5  
6 ACTION: The Planning Commission set a public hearing on final subdivision  
7 application number SUB272 for its next meeting on October 14, 2003.  
8  
9

### 10 **8. United Towing and Recovery, Inc.**

11  
12 Frank Allegretti (applicant's attorney) described the proposed project noting that it  
13 involved the re-use of a property located at 22 Nursery Lane for an auto repair and  
14 impound/towing facility. Mr. Allegretti stated that a proposed building would include  
15 three service bays and that would be three off-street parking spaces consistent with the  
16 requirements of the Rye City Zoning Code. He noted that the proposed use would  
17 involve automotive repair, as well as, the impounding of vehicles for the Rye City Police  
18 Department.  
19

20 The Commission questioned the ability of the site to impound vehicles. The  
21 Commission requested that the site plan be revised to show how vehicles would be  
22 stacked on the property and how many vehicles could be accommodated.  
23

24 The Commission reviewed the applicant's submission and the letter from the property  
25 owner consenting to the submission of the application. The Commission requested that  
26 the applicant provide an additional letter from the property owner that was consistent  
27 with the use proposed by the applicant. The Commission noted that the letter provided  
28 in the submission indicated that the proposed use was a towing and impound facility  
29 rather than the vehicle repair that was indicated by the applicant.  
30

31 The Commission questioned the environmental issues associated with the proposed  
32 use such as the disposal of oil and other toxic substances. Aaron Wilhelm (applicant)  
33 indicated that the proposed facility would be limited to auto repair and would not involve  
34 gas service. The regulated substances would be limited to oil and transmission fluid,  
35 which would be disposed of in accordance with all applicable laws. Mr. Wilhelm  
36 indicated that there would be no aerosols or other toxic substances associated with  
37 auto body use at the site. No auto body repair would be performed.  
38

39 The Commission questioned whether taxes on the property are owed to the City. The  
40 Commission requested that Corporation Counsel review whether it is appropriate for the  
41 Commission to review an application that is tax delinquent.  
42

43 Mr. Allegretti responded that to the best of his knowledge no back taxes were owed but  
44 that he would research this information. The Commission suggested that if such taxes

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1 are owed to the City then the public's interest in the property changes since it has (in  
2 some capacity) subsidized this property for many years.

3  
4 The City Planner noted the encroachment of the Nursery Lane right-of-way on the  
5 applicant's property. The City Planner questioned whether the applicant had the right to  
6 place structures and conduct activities within this easement area as shown on the site  
7 plan. Mr. Allegretti responded that there was no prohibition of such activities within  
8 existing legal documents and that the City does not own this area. He further added  
9 that the City has not acquired or used this right-of-way in the last 40 years. The  
10 Planning Commission requested that Corporation Counsel review this matter and  
11 determine what rights the applicant has to place structures and conduct activities within  
12 an established right-of-way. Mr. Allegretti indicated that he will contact Corporation  
13 Counsel regarding this matter.

14  
15 Doug Carey (Rye Resident) stated that he was the CDBG representative for the  
16 Gagliardo Park area. He noted that he was involved in establishing an organic garden  
17 in the area and that he was concerned about the impact of the proposed use on the  
18 adjacent park. Mr. Carey stated that the proposed use was also a concern to the  
19 Recreation Commission, which he also serves on. Mr. Carey stated that based on  
20 information he obtained from the City that the subject property owes approximately  
21 \$150,000 in back taxes.

22  
23 The Commission agreed that it would not set a public hearing on this matter until  
24 additional information regarding the tax status of the property and the restrictions  
25 regarding the use of property within the right-of-way where addressed by applicant and  
26 Corporation Counsel.

### 27 28 29 **9. Discussion of Draft Hazard Mitigation Plan**

30  
31 The Commission discussed the draft hazard mitigation plan. The Commission  
32 questioned the benefit of the plan and suggested that it appeared to be a "feel good  
33 document." The City Planner responded that the plan attempts to comprehensively  
34 plan for a variety of manmade and natural hazards, which has never been done for the  
35 City. He also noted that having an all-hazard plan was a prerequisite if the City wants  
36 to be eligible for any federal hazard mitigation funding. He noted that such federal  
37 funding would likely be necessary for any meaningful mitigation project, given the City's  
38 fiscal constraints. He also added that the recommendations were developed with the  
39 assistance of the hazard mitigation committee and that they were not overly aggressive.  
40 Aggressive strategies would be difficult to implement.

41  
42 The Commission suggested that the list of critical facilities be reviewed since the  
43 number of people listed at these facilities appeared high.

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1

2 **10. Minutes**

3

4 The Commission reviewed and approved minutes of its July 29, 2003 meeting.